

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of PHILLIP MISNER, Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

BOE MISNER,

Respondent-Appellant,

and

HEATHER MISNER,

Respondent.

UNPUBLISHED

June 16, 2000

No. 221029

Ottawa Circuit Court

Family Division

LC No. 97-000206-NA

Before: Bandstra, C.J., and Jansen and Whitbeck, JJ.

PER CURIAM.

Respondent Boe Misner¹ appeals as of right the trial court's order terminating his parental rights to Phillip Misner under MCL 712A.19b(3)(j); MSA 27.3178(598.19b)(3)(j). We affirm.

This appeal arises from a series of events that began before Phillip Misner was born. In August 1997, petitioner was contacted by a daycare center with information that Phillip's stepbrother, Logan Reynolds, had arrived at the center with bruises on his body. Heather Misner gave inspectors for petitioner four different stories about how the bruises occurred. First, she told them that Logan had been bruised by respondent's mother. Next, she told them that a cousin of respondent's had spanked

¹ Boe Misner will be referred to as "respondent" in this opinion. Heather Misner will be referred to by her name. Where the parties are referred to collectively, the term "respondents" will be used.

Logan. Later, she told investigators that she had caused the bruising by spanking Logan. A petition was filed asking that the court take jurisdiction over Logan. Heather Misner entered a plea of no contest to the allegations in the petition. The court took jurisdiction over Logan in October 1997.

Phillip was born in late October 1997. On December 19, 1997, a petition was filed asking that the court take jurisdiction over him as well, alleging that (1) defendant had been convicted of fourth-degree child abuse for the abuse of his son, Eric Smith, and (2) Logan had sustained further bruising in November, 1997. At about the same time as the November incident, Heather Misner told investigators that respondent had spanked Logan and caused the bruising that had been discovered in August. Heather Misner and respondent entered pleas of no contest to the allegations and the court took jurisdiction. In its dispositional order, the trial court required that respondent not be with the children except when the visits were supervised by a local agency. In addition, the order required that respondent submit to drug tests on request of the caseworker.

Over the next year, several more acts of abuse involving respondent were documented. In addition, petitioner asked for orders to show cause on several occasions when respondent refused to submit to drug testing. In November 1998, Phillip and Logan were removed from the home after workers again discovered bruises on Logan.

A petition to terminate parental rights was filed in January 1999, alleging that termination was proper under MCL 712A.19b(3)(c), (g), and (j); MSA 27.3178(598.19b)(3)(c), (g) and (j). A hearing was held on the petition in June 1999. At that time, evidence was introduced that respondent had struck Logan on several occasions and that Logan told investigators that he did not like respondent "because he always hits me." Logan also acted out what occurred in interactions with defendant; he jumped up on a chair, pointed his fist, hit himself in the back, then tossed himself off the chair onto the ground. When an investigator gave Logan a stuffed toy and asked what he and respondent did together, Logan punched the toy and knocked it to the ground. When respondent was confronted with this information by one of the investigators, he began screaming at the investigators. He became more belligerent as the meeting went on, then left, shouting obscenities.

Evidence was also developed concerning respondent's abuse of Eric Smith. Respondent told counselors that, although he had been found guilty, he was not in fact guilty of abusing Eric. However, evidence was also introduced that Eric had been brought into Zeeland Hospital in May 1994 with numerous injuries to his head and face. Respondent first told police that the injuries occurred when he slammed on his brakes while Eric was in the car. When a treating physician said the story was inconsistent with the injuries, respondent admitted that he had hit Eric because the child was squirming and screaming.

In addition to the evidence of defendant's abuse of Logan and Eric, the court received evidence that he had hit Phillip on the back of the head when Phillip was eleven months old. There was no evidence of physical injury sustained by Phillip although there was evidence that Phillip cried when hit. Heather Misner said that respondent had "tapped" the child and hurt his feelings.

Petitioner also introduced evidence that respondent had largely failed or refused to cooperate with the counseling and drug treatment and screening programs offered. However, there was evidence that respondent had gone to a number of meetings of Alcoholics Anonymous and that he was attending sessions on anger management.

Following the close of testimony, the court found that respondent was responsible for acts of abuse to Logan and Eric and that he had slapped Phillip. It concluded there was a reasonable likelihood that Phillip would suffer physical injury or abuse in the foreseeable future if he was in a home occupied by respondent. The court further found that efforts to change respondent's behavior had not been successful. Accordingly, the court terminated respondent's parental rights to Phillip.

In a termination hearing, the petitioner bears the burden of showing by clear and convincing evidence a statutory basis for termination. MCR 5.974(F)(3). Once a statutory basis for termination is shown, the trial court shall terminate parental rights unless it finds that termination of parental rights is clearly not in the child's best interests. MCL 712A.19b(5); MSA 27.3178(598.19b)(5); *In re Hall-Smith*, 222 Mich App 470, 472; 564 NW2d 156 (1997). This Court reviews the trial court's decision for clear error. MCR 5.974(I); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). "A finding is 'clearly erroneous' [if] although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been made." *Id.*, quoting *In re Riffe*, 147 Mich App 658, 671; 382 NW2d 842 (1985).

Respondent contends that the court's order of termination was improper because it gave no specific statutory basis for the termination. However, he offers no authority for his claim. As a result, this claim has been abandoned. *In re Powers*, 208 Mich App 582, 588; 528 NW2d 799 (1995). Even if the claim had not been abandoned, we would find it without merit. The court found that it was terminating respondent's rights because there was a substantial likelihood that Phillip would suffer physical injury or abuse if he was in a home occupied by respondent. This is clearly a reference to MCL 712A.19b(3)(j); MSA 27.3178(598.19b)(3)(j). The court's findings are sufficient as long as they clearly go to one or more of the statutory bases for termination alleged in the petition. *In re Conley*, 216 Mich App 41, 44; 549 NW2d 353 (1996). The findings in this case could have gone to only one of the statutory bases alleged in the petition. As a result, the findings were sufficient.

Respondent also claims that the trial court's ruling was clearly erroneous. Again, we disagree. Nearly all the evidence of abuse involved respondent's conduct toward Phillip's half-brother, Logan Reynolds. However, evidence of abuse by an adult of one child is probative of how the adult will act toward another child. *Powers, supra* at 591-592; *In re LaFlure*, 48 Mich App 377, 392; 210 NW2d 482 (1973). In addition, the evidence of respondent's abuse of Eric Smith indicated that his behavior was not isolated. Further, the evidence that respondent had slapped Phillip, taken with the evidence of abuse toward Logan and Eric, provides strong evidence that respondent's abusive behavior would continue and that Phillip would be in danger if he was returned to respondent's home.

When one of the statutory grounds for termination is proven by clear and convincing evidence, termination is mandatory unless the court finds that termination of parental rights is not in the child's best interests. MCL 712A.19b(5); MSA 27.3178(598.19b)(5); MCL 5.974(E)(2). The requirement that

parental rights be terminated places a burden on the respondent of going forward with evidence showing that the termination is clearly not in the child's best interests. *Hall-Smith, supra* at 473. No evidence was directly presented by respondent to show that the termination was not in Phillip's best interests. Respondent only says that termination would "be of absolutely no service to the minor child." In support of his claim, respondent points to summaries of supervised visits respondent had with Phillip during a ten-week period between the time the termination petition was filed and the time of the hearing. The summaries indicate that the visits were incident-free and that Phillip enjoyed seeing his parents. However, the trial court could have concluded that respondent's conduct was due to the pending petition for termination and the supervised nature of the visitation. As a result, it could well have concluded that this record did not clearly show that termination was not in Phillip's best interests. The decision to terminate was not clearly erroneous. Because of our disposition of this issue, we need not address respondent's claim that termination under MCL 712A.19b(3)(c); MSA 27.3178(598.19b)(3)(c) was improper.

We affirm.

/s/ Richard A. Bandstra

/s/ Kathleen Jansen

/s/ William C. Whitbeck